IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 654 of 1995

Date of Decision:1.7.2004

MANIBEN S PANDYA

Versus

SHANSHIKANT P SHRIGALOR

(for full cause title, see next sheet)

Coram:

The Hon'ble Mr.Justice Bhawani Singh, Chief Justice

The Hon'ble Mr.Justice H.K.Rathod, Judge

Whether approved for reporting?

1. First Appeal No. 654 of 1995
MR MITUL SHELAT WITH
MR RAJESH K DESAI for Appellants
SERVED BY RPAD - (N) for Respondent No. 1
MS MEGHA JANI for Respondent No. 2
NOTICE SERVED BY DS for Respondent No. 3
MR RAJNI H MEHTA for Respondent No. 4

PER: CHIEF JUSTICE (ORAL):-

Award passed by the Motor Accident Claims Tribunal, Valsad (Navsari) in Motor Accident Claim Petition No. 572 of 1988 dated June 18, 1992 has been challenged through this appeal.

Whether reporters of Local Papers may be allowed
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to see the Judgment?

The claimants are the mother, wife and children of the deceased Gunvantrai Shanabhai Pandya (35). They claimed compensation of Rs.3,50,500.00 for death of Gunvantrai Pandya (Deceased) in the motor accident which took place on February 27, 1987 at 12.30 p.m. on National Highway No. 8 within the local limits of village Nandigam. Deceased was the driver of Truck No. GTJ-7140 owned by M/s. Shyam Transport Company, Nadiad. He was coming towards Ahmedabad. This Truck was insured with Oriental Insurance Co. Ltd. The allegation is that the Truck No. MXL-7897 owned and driven by Opponent No. 2 and insured with the National Insurance Company Ltd. coming from the opposite direction going towards the Bombay collided with the truck of the deceased after coming into his side of the road. As a result of this accident, the deceased sustained serious injuries. Immediately, he was taken to the Municipal Hospital Valsad, remained there for about seven days, then, shifted to the Civil Hospital at Ahmedabad for better treatment. However, he succumbed to the injuries sustained in the motor accident on 9.3.1987. The deceased was the sole bread winner of the family, receiving Rs.400.00 p.m. apart from Rs.50.00 per day while on journey. Therefore, his income is stated Rs.1,400.00 which he was contributing to the family. The claimants have impleaded owners and drivers of both the vehicles involved in the accident apart from the Insurance Companies with which the vehicles were insured. The owner and driver of the Truck No. MXL-7897 have not resisted the claim of the claimants. The National Insurance Co. Ltd. has denied the allegation, stated that the Truck No. MXL 7897 was being driven properly at moderate speed in accordance with the rules of traffic. It is contended that it was the deceased who was driving the Truck No. GTJ-7140 carelessly, negligently at excessive speed in the middle of the road. He lost control over the vehicle and collided with the truck No. MXL-7897. As a result of the impact of the accident, truck No. MXL 7897 went of the road to a distance of about 19 ft. and fell into a pit while truck of the deceased went of the road and came to halt at a distance of about 20 ft. after hitting the tree. Truck was badly damaged, therefore, under the circumstances, the deceased was rash and negligent in driving the truck. Consequently, the National Insurance Company is not liable to pay the compensation. In case the conclusion

of the liability of truck No. MXL-7897 is drawn, apportionment of the liability should be 20% and 80 % respectively.

Owner of Truck NO. GTJ-7140 holds the driver of truck No. MXL-7897 responsible for the accident. Both the companies admit that these trucks were insured with the insurance companies.

On the pleadings of the parties, the Tribunal framed following issues at Exh. 41:

(1) Whether the applicants prove that the death of Gunvantrai Sanabhai Pandya was caused by rash and negligent act of Opponent No.1 driving truck No. MXL-7897 on 27.2.1987 ?

(2) Whether the applicants are entitled for compensation ? If yes, what should be awarded as a compensation ?

(3) Which of the Opponents are liable and to what extent ?

(4) What Award ?

After considering the evidence led in the case and hearing the parties, the conclusion drawn is that the death of the deceased was not for the reasons alleged by the claimants. Accordingly, compensation has been assessed but the claimants have not been held entitled for the same. Consequently, the Tribunal held that the issue No. 3 is not surviving for consideration. The claim was, therefore, dismissed by the Tribunal. Dissatisfied with this judgment, the claimants filed this appeal seeking reversal thereof.

Heard learned Counsel for the parties. Evidence and record are perused. The first questions for determination are how accident took place, liability therefore and extent of compensation payable. On this question, there is FIR, Panchanama and physical facts with regard to the taking place of accident. FIR has been recorded at the instance of driver of the Truck No. MXL - 7897 at 17.00 hours to 18.15 hours. Since it has been recorded at the instance of the driver of Truck No. MXL-7897, much credence cannot be given to it since the driver would narrate the story which suits him to save his skin. In the framing of the Panchanama, important points have been omitted, meaning thereby, actual point of accident has not been mentioned at all; the framer and

the witness thereof have not been examined. The suggestion is, after the accident, the trucks went to their right side. The contention of the National Insurance Co. Ltd. is that the truck No. MXL-7897 was moving on the correct side of the road; the deceased wanted to over take a car, therefore, came towards the right side of the road as a result, the accident took place. There is no evidence which car was ahead of the truck of the deceased he wanted to over take. As such, this evidence is also undependable for examining the case. With this back ground, the duty of the Court is to go into the facts deeply and draw appropriate inference from the physical facts found soon after the accident. Therefore, the legitimate conclusion which can be drawn is that, road was 39 ft. at the place of accident, out of which 23 ft. was pacca. Both the vehicles were moving in different directions, they collided and separated. Had there been car in front of the truck No. GTJ-7140, damage would have been caused to the car since the accident took place at the stage when truck No. GTJ-7140 was by its side. Otherwise, had the truck took over it, no damage could be caused to the car nor could there be accident with the other truck since it would have gone to the left side of the road. With this back ground, instead of applying the principle of Res Ipsa Loquitur, the matter can be decided on the basis of the available physical facts. It is held that both the drivers were responsible for the accident in equal measure.

Another facet of the question is whether the claimants would be entitled to the compensation when the facts suggest the contribution of deceased to the accident as contended by Mr. Ajay R.Mehta, that the Company should not be held liable. Perusal of the Insurance policy discloses that the injury to the driver has been covered by payment of additional premium. The question whether the Insurance Company is liable in such a case is covered by the decision of the Division Bench of this Court in First Appeal No. 125 of 1984, 1013 of 1984 and 1383 of 1984 decided on October 15, 1993. In para 21 to 23, it is said that;

21. Then comes the question of liability of the United India Insurance Co., so far as truck driver is concerned, it was submitted by the learned counsel for the Insurance Co. that the dependents of deceased truck driver cannot get compensation from the insurance Co. in view of the finding of the tribunal that the driver was

100% negligent. It was submitted by Mr. Nanavati that in view of the above finding recorded by that Tribunal and affirmed by this Court, neither the owner nor the insurance Co. can be directed to make payment of compensation towards the claim of the death of Riyajuddin. Mr.Nanavati submitted that recording of finding of negligence is a sine qua non for getting compensation in any motor accident case. Heavy reliance was placed by Mr. Nanavati in this connection on the decision of the Hon'ble Supreme Court in the case of Minu B. Mehta v/s. Balkrishna Ramchandra Nayan reported in AIR 1977 SC 1248. In that case, the Hon'ble Supreme Court held that a person is not liable unless he contravenes any of the duties imposed on him by common law or by a statute. In a motor accident, the owner is only liable for negligence. If there was no negligence on the part of the owner, the Insurance Company cannot be held liable for the payment of compensation in a motor accident claim case. Mr.Nanavati submitted that since the driver himself was negligent, he cannot claim any compensation from the owner and the Insurance Company can be held liable only if the owner is liable in law and, hence, the Insurance Co. must be exonerated.

22. Mr. Shah, on the other hand, submitted that in the instant case, as per the policy Exh. 282, Additional premium of Rs. 16.00 as per IMT 16 has been paid covering the risk of driver and cleaner subject to IMT 16. Mr. Shah, therefore, submitted that the claim is based on policy and since as per the terms and conditions of the policy, a driver is covered, the Insurance Company is liable and the tribunal ought to have held the company liable.

23. Looking to the provisions of section 95 of the Act and the policy, Exh. 282, it is clear that the policy covers the risk of driver and cleaner and additional payment of Rs.16.00 was paid. In view of payment of additional premium of Rs.16/-, the Insurance Co. is liable as per the terms of policy, and the ratio laid down in Minu Mehta's case (supra) cannot be attracted and pressed in service by the Insurance Co. Because of payment of additional premium, the Insurance Company has extended the coverage for the risk of driver and cleaner. In our opinion, therefore,

> the Insurance CO. cannot be absolved from liability by contending that the claimants were not entitled to compensation since there was 100% negligence on the part of the driver. The claimants are entitled to get compensation from the Insurance Co. for the death of driver on the ground that the case is covered under the terms of policy irrespective of negligence on his part."

Consequently, the conclusion is that the drivers of both the trucks are equally responsible for the accident, therefore, the Insurance Companies should pay the same in equal shares.

Next question is the amount of compensation payable in this case. We have examined the assessment of compensation made by the Tribunal. In absence of the evidence, the claimants are not entitled to loss to the estate. However, they would be entitled to the loss of expectancy of life, funeral expenses, transport expenses, medical expenses, attendant charges, special diet since the death took place after about eleven days from the date of accident. The deceased was earning Rs.1400.00 per month. He was 35 years old at the time of accident. Appropriate multiplier, therefore, should be 17 instead of 15 adopted by the tribunal.

Therefore, after deducting 1/3rd towards the personal expenses of the deceased from the monthly income of Rs.1400/-, remaining amount of Rs.934/- would be the contribution to the family. Consequently, the claimants would be entitled for the compensation of Rs.934 x 12 x 17= 1,90,536.00. Total figure of compensation under different heads will be Rs.1,90,536 plus Rs.5,000.00 [Loss of expectation of life], Rs.10.000 [Medical expenses, attendant, special diet, transportation, pain and shock etc.], Rs.3,000/- [Funeral expenses] = Rs.2,08,536.00.

The total compensation of Rs.2,08,536.00 [Rupees two lacs eight thousand five hundred thirty six only] shall carry interest at the rate of 9 per cent p.a. from the date of the application till December, 2000. Thereafter, at the rate of 6 per cent p.a. till the date of payment. Appeal is allowed in aforesaid terms leaving the parties to bear their own costs.

[BHAWANI SINGH]
CHIEF JUSTICE

[H.K.RATHOD]
JUDGE

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